

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Applicant:

J. Sam CURETON et al.

Application No.: 09/044,426

Filed: March 19, 1998

For: SATELLITE BASED GLOBAL
POSITIONING SYSTEM FOR FEEDLOT
COMPUTER NETWORK AND METHOD)

Confirmation No.: 6893

Group Art Unit: 3629

Examiner: T. Dixon

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**PETITION UNDER 37 C.F.R. § 1.182 TO AMEND
CLAIM OF PRIORITY UNDER 35 U.S.C. § 120**

Sir:

This is a petition under 37 C.F.R. § 1.182 to amend the claim of priority under 35 U.S.C. § 120 in an Application in which a Continued Prosecution Application (CPA) has been filed. A petition fee of \$130.00 under 37 C.F.R. § 1.17(h) is due. Authorization to charge Deposit Account 50-0310 therefor is hereby granted.

The original Application, not the CPA, should have claimed priority from co-pending U.S. non-provisional Application No. 08/705,620, now U.S. Patent No. 6,032,084, issued on February 29, 2000, (Anderson). Accordingly, Applicants petition to amend the specification of this Application, which was abandoned upon filing of the CPA.

Applicants respectfully submit that the entire delay of this submission of the claim of priority under 35 U.S.C. § 120 after the due dates under 37 C.F.R. § 1.78(a)(2) was unintentional:

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1. The Office Actions dated March 9, 2001, February 7, 2002, and February 26, 2003, rejected the claims of the original Application as being anticipated under 35 U.S.C. § 102(e) by Anderson;

2. In responses filed by Applicants on June 12, 2001, (certificate of mailing date of June 8, 2001), and May 6, 2002, Applicants argued that Anderson and the this Application are, and were, commonly assigned;

3. Applicants recognized on or about July 15, 2003, that the specification and drawings originally filed in Anderson are identical to the specification and drawings as originally filed in this Application;

4. On July 28, 2003, and in response to the Office Action dated February 26, 2003, Applicants submitted in the CPA a petition under 37 C.F.R. § 1.78(a)(3) to accept an unintentionally delayed claim of priority under 35 U.S.C. § 120;

5. On August 25, 2003, Applicants filed a Notice of Appeal in the CPA; and

6. On October 30, 2003, the U.S. Patent and Trademark Office issued a decision (PTO decision) on the petition under § 1.78(a)(3). The PTO decision stated that the filing date for this Application is March 19, 1998, and that “a petition for acceptance of a late claim for priority under § 1.78(a)(3) is applicable to those applications filed on, or after, November 29, 2000.” Accordingly, Applicants’ petition was dismissed as moot.

Applicants’ previous petition filed under § 1.78(a)(3) did not indicate that the previous petition was filed in a CPA. Nor did Applicants appreciate that the priority claim was to be corrected in the specification of an abandoned application, i.e., this Application, due to the filing of the CPA and that, therefore, a petition under 37 C.F.R. § 1.182, not § 1.78(a)(3), was required to correct the priority claim. Accordingly, Applicants file this petition in response to the PTO decision.

Submitted concurrently herewith is an amendment to the specification that provides the reference to the prior-filed application that was inadvertently omitted from the priority claim of this Application in accordance with 35 U.S.C. § 120.

Applicants believe that no fee under 37 C.F.R § 1.17(t) is due. As stated in the PTO decision, this Application was filed on March 19, 1998, which is before November 29, 2000. Applicants believe that the fee required under § 1.17(t) applies only to applications filed on, or

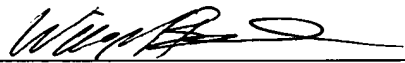
after, November 29, 2003. However, if it is deemed necessary, the Commissioner is hereby authorized by this paper to charge the petition fee of \$1330.00 under § 1.17(t).

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Date: December 11, 2003

By: 
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